

On October 6, 1992 appellant, then a 43-year-old welder, sustained injury to his left knee in the performance of duty. The Office adjudicated the claim as an occupational disease because

he attributed his condition to work factors occurring over more than one workday.¹ It accepted appellant's claim for a left knee strain and a torn meniscus. Appellant underwent a medial meniscectomy of the left knee on November 23, 1992.²

By decision dated January 19, 1995, the Office granted appellant a schedule award for a 10 percent permanent impairment of the left lower extremity. The period of the award ran for 28.80 weeks from November 10, 1994 to May 30, 1995.

On June 22, 2007 appellant filed a second claim (Form CA-7) for a schedule award. On October 18, 2007 the Office requested that he provide a report from his attending physician addressing the extent of any employment-related permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001).³

By decision dated November 26, 2007, the Office denied appellant's claim for a schedule award. It found that he had not submitted any medical evidence in support of his claim for an increased schedule award.

On December 11, 2007 appellant requested a telephonic hearing. His representative alleged that he had not received the 1995 schedule award. On April 21, 2008 the Office informed appellant that as he had not appeared for the hearing it would consider his hearing request as a request for a review of the written record. It noted that the issue was whether he had provided medical evidence sufficient to establish more than a 10 percent left lower extremity impairment. The Office again requested that appellant submit a detailed medical report from his attending physician addressing the extent of any permanent impairment under the A.M.A., *Guides*.

By decision dated June 27, 2008, a hearing representative affirmed the November 26, 2007 decision. She found that appellant had not submitted any medical evidence in support of his request for an additional schedule award.

¹ A traumatic injury is defined as a "condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a "condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

² By decision dated November 16, 1992, the Office denied appellant's claim for continuation of pay as his injury occurred over the course of more than one workday. On December 20, 1993 it found that he had abandoned his request for a hearing. Appellant appealed to the Board. On January 12, 1998 the Board affirmed the December 20, 1993 decision. Docket No. 94-2327.

³ The Office initially sent the letter on September 10, 2007 to an incorrect address. It resent the letter on October 18, 2007.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing federal regulations,⁵ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁶ Office procedures direct the use of the fifth edition of the A.M.A., *Guides*, issued in 2001, for all decisions made after February 1, 2001.⁷

Where a claimant has previously received a schedule award and subsequently claims an additional schedule award due to a worsening of his or her condition, the claimant bears the burden of proof to establish a greater impairment causally related to the employment injury.⁸

ANALYSIS

The Office accepted appellant's claim for left knee strain and a left meniscal tear. Appellant underwent a medical meniscectomy of the left knee on November 23, 2002. On January 19, 1995 the Office granted appellant a schedule award for a 10 percent permanent impairment of the left lower extremity.

On June 22, 2007 appellant submitted a claim for an increased schedule award. On October 18, 2007 the Office requested that he provide an impairment evaluation from his attending physician with an estimate of any permanent impairment due to his employment injury in accordance with the A.M.A., *Guides*. Appellant, however, did not submit any medical report. It is his burden of proof to submit probative medical evidence establishing that he has a greater impairment causally related to the employment injury.⁹ The Office, consequently, properly denied appellant's claim for an increased schedule award.

On appeal, appellant contends that he did not receive payment from November 10, 1994 to May 30, 1995 for the prior schedule award. He asserted that when he filed the CA-7 form in June 2007 he wanted to receive the balance of compensation owed from the prior award. The Board's jurisdiction, however, is limited to reviewing final decisions of the Office.¹⁰ As the

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Id.* at § 10.404(a).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

⁸ *Edward W. Spohr*, 54 ECAB 806 (2003).

⁹ *Id.*

¹⁰ 20 C.F.R. § 501.2(c).

Office has not addressed this issue in a final decision, the Board cannot review the matter for the first time on appeal.¹¹ Such issues would have to be addressed by the Office.

CONCLUSION

The Board finds that appellant has not established that he has more than a 10 percent permanent impairment of the left lower extremity.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 27, 2008 and November 26, 2007 are affirmed.

Issued: June 16, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Id.*; see also *Linda Beale*, 57 ECAB 429 (2006).